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BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: WC Docket No. 02-214, *Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization To Provide In-Region, InterLATA Services in Virginia*

Dear Ms. Dortch:

This letter responds to Verizon's October 22 ex parte letter concerning the benchmarking of switching rates. Eighty-two days into this 90-day proceeding, Verizon offers for the first time a switching-only benchmarking comparison of its switching rates. The appropriate benchmark states for this purpose, Verizon argues—also for the first time in this proceeding—are Texas, Louisiana and Oklahoma.

Verizon's October 22 filing is a welcome—if grudging and exceedingly belated—admission that switching-only benchmark comparisons have relevance in 271 proceedings. Verizon's proposal to use Texas, Louisiana and Oklahoma as the benchmark states, however, is patently unlawful.[1]

[1] AT&T hereby requests that the Commission exercise its discretion to waive its 20-page limit on ex parte filings to allow consideration of this filing. Verizon has supplemented its formal comments in this proceeding with approximately 450 pages of ex parte filings, all of them purportedly solicited or authorized by the Commission's staff. Fairness dictates allowing AT&T four additional pages to respond to new arguments made by Verizon for the first time in its

The elephant in the room that goes unmentioned in Verizon's ex parte letter is, of course, New York. Verizon does not even attempt to explain why New York, Verizon's own candidate as the benchmark state for every UNE until now, has suddenly become an unsuitable benchmark state for switching. Nor does Verizon explain why it rejected every other state in Verizon's territories, north and south, as a benchmark in favor of three non-Verizon states 500 or more miles to the southwest. Commission precedent, however, precludes so nakedly result-oriented a method of selecting benchmark states.

(1)

The Commission has specifically held that Section 271 applicants may not game the benchmarking process by selecting different benchmark states for different UNEs. The "same benchmark state must be used for all rate comparisons to prevent a BOC from choosing for its comparisons the highest of approved rates for both loop and non-loop UNEs." *Pennsylvania 271 Order* ¶ 66. Verizon has asked the Commission to rely in this proceeding on New York rates—and only New York rates—as the appropriate benchmark for every non-switching UNE rate in Virginia. New York must therefore remain the benchmark for switching as well.

(2)

The three new anchor states now offered by Verizon would be unreasonable benchmarks for Virginia even if Verizon had proposed those states as benchmarks for all UNEs, and from the outset of this case. The Commission has established several tests of whether a particular state is an appropriate rate benchmark: (1) whether the proposed benchmark state and the applicant state have a common BOC; (2) whether the proposed benchmark state has geographic similarities to the applicant state; and (3) whether the proposed benchmark state has a similar rate structure to the applicant state.[2] Absent these conditions, a benchmark comparison is meaningless. Texas, Louisiana and Oklahoma satisfy *none* of these criteria.

Different BOCs. Virginia and the three proposed anchor states are served by different BOCs: Virginia by Verizon, Texas and Oklahoma by SWBT, and Louisiana by BellSouth. SWBT and BellSouth operate on different scales, deploy different network architectures, and use different cost studies to estimate costs than does Verizon. Verizon's October 22 ex parte makes no attempt to control for these differences.

October 22 ex parte, barely one week before the statutory deadline for the Commission's decision in this proceeding.

[2] *Rhode Island 271 Order* ¶ 38; *see also Missouri/Arkansas 271 Order* ¶ 56; *Pennsylvania 271 Order* ¶ 63; *Massachusetts 271 Order* ¶ 28; *Kansas Oklahoma 271 Order* ¶ 82.

Geographic Differences. The Commission also has explained that a state may be an inappropriate benchmark if it has dissimilar geographic characteristics compared to the applicant state. Verizon has made no showing that the SWBT and BellSouth territories in Texas, Louisiana and Oklahoma are comparable to Verizon's territory in Virginia in any important measure, including the number of households served by central offices, the average number of lines served by central offices, the average area served by a central office, the average density of lines per square mile, or the ratio of residential lines to business lines. Without controlling for these factors, the benchmark comparisons are meaningless.

Inconsistent Rate Structures. The Commission has explained that a state may be an inappropriate benchmark if it has a dissimilar rate structure compared to the applicant state, because different rate structures make it very difficult to accurately compare rates between states.[3] In this regard, Verizon's assertion that aggregate non-loop benchmarking is better than switching-only benchmarking because "states employ different rate structures for various non-loop elements and allocate costs differently among various rate elements" (Verizon Oct. 22 ex parte at 1) is ironic. The frequency with which Verizon has repeated this assertion is matched only by Verizon's utter failure to offer any explanation of how "different rate structures" or differing cost allocations actually taint a switching-only benchmark comparison between Virginia and New York. Moreover, if Verizon regarded concerns of this kind as serious, it would try to minimize them by limiting benchmarking comparisons to states within Verizon's territory. Common sense suggests that extending the benchmark comparisons across RBOC and regional boundaries exacerbates these concerns exponentially.

In fact, there are substantial differences in the switching rate structure between Virginia and the other three states. For example:

- Intraswitch calls (i.e., calls that between two parties served by the same wire center) are assessed two switch charges—originating and terminating—in Virginia, but only one charge in the other three states. Verizon, however, has assumed that all four states are alike in this respect, thereby understating the effective cost of switching in Virginia vis-à-vis the other three states. Simply correcting the error to reflect a reasonable amount of intraswitch usage in the rate evaluation, while leaving the remaining assumptions of Verizon's analysis unchanged, causes the Virginia switching charges to fail a benchmark comparison with Texas—even if signaling is included.

[3] *Rhode Island 271 Order* ¶ 38; *see also Missouri/Arkansas 271 Order* ¶ 56; *Pennsylvania 271 Order* ¶ 63; *Massachusetts 271 Order* ¶ 28; *Kansas Oklahoma 271 Order* ¶ 82.

- The Texas rate structure is unique compared to all other states in that the port rate is based on rate-groupings that depend on the size of the calling areas served by particular wire centers.[4]

- Both Texas and Oklahoma have usage rates for switching and common transport that vary by density zone.

- Louisiana has a tandem trunk port charge as well as an end office trunk port charge; Virginia does not.

- And, as Verizon notes in its ex parte filing, Texas and Oklahoma have signaling charges and Virginia does not.

Verizon has also failed to satisfy a fourth condition established by the Commission for rate benchmarking: the rates in the benchmark state must themselves be TELRIC-compliant. *Pennsylvania 271 Order* ¶ 67 ("[w]ithout a finding of TELRIC compliance for the benchmark state, a comparison loses all significance."). AT&T believes that the switching rates in Texas, Louisiana and Oklahoma are no longer TELRIC compliant—assuming *arguendo* that they ever were.[5] Because the Verizon has failed to satisfy the three threshold requirements for benchmarking discussed above, however, it is unnecessary to consider the fourth issue here.

Very truly yours,

David M. Levy

An Attorney for AT&T Corp.

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[4] *See id.*

[5] *See*, *e.g.*, WC Docket No. 02-306, *Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California*, Comments of AT&T Corp. (Oct. 9, 2002) at 20-23 (explaining why the Texas rates are not-TELRIC compliant); *id*., Lieberman-Pitkin Decl. (Oct. 9, 2002) ¶¶ 8-15.